

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7537

Petition of Vermont Gas Systems, Inc., for renewal)	Hearing at
of its Alternative Regulation Plan)	Montpelier, Vermont
		August 27, 2009

Order entered: 9/23/2009

PRESENT: John P. Bentley, Esq.
Hearing Officer

APPEARANCES: Kimberly K. Hayden, Esq.
John H. Marshall, Esq.
Downs Rachlin & Martin PLLC
for Vermont Gas Systems, Inc.

Jeanne Elias, Esq.
for Vermont Department of Public Service

I. INTRODUCTION

This matter involves a request by Vermont Gas Systems, Inc. ("VGS" or "Company"), with the support of the Vermont Department of Public Service (the "Department"), to continue to be regulated under the Alternative Regulation Plan ("ARP")¹ approved by the Vermont Public Service Board ("Board") in Docket No. 7109, by its Order dated September 21, 2006 (the "7109 Order").

The objective of the ARP is to regulate VGS' rates under an alternative rather than through litigated cost-of-service investigations, even though the Company's rates will still be based on its cost of service. The key provision of the ARP is to allow VGS to adjust its rates quarterly to reflect the changing cost of purchased gas. The ARP also allows VGS to make an annual rate adjustment based upon changes in its costs not related to purchased gas. All of these adjustments are subject to review by the Department and the Board. There are also provisions to

1. The ARP has been slightly modified, as set out in the Findings below.

encourage demand-side management, expansion of the service territory to serve more customers, and to enforce service quality and reliability standards. The goal of the ARP, and of any such plan, is to provide least-cost service to customers at just and reasonable rates and to create incentives for innovation and efficiency, while providing an opportunity for the regulated utility to earn a fair rate of return. Overall cost savings from the ARP are to be shared with ratepayers.²

By this Proposal for Decision, I propose that the Board make the findings of fact set out below, approve the Memorandum of Understanding (the "MOU"), and issue an order allowing VGS to continue to be regulated under the ARP for an additional two-year term, commencing on October 1, 2009.

II. BACKGROUND AND PROCEDURAL HISTORY

In the 7109 Order, the Board approved a Memorandum of Understanding, dated July 28, 2006, between VGS and the Department (the "Initial MOU") by which they agreed to allow the Company to implement, under 30 V.S.A. § 218d ("Section 218d"), an Alternative Regulation Plan (the "ARP"). The 7109 Order also approved the ARP, after making the necessary findings under Section 218d required to authorize VGS to implement an alternative regulation plan.

The ARP has a term that expires on September 30, 2009, unless extended under subparagraph 1c. Under subparagraph 1c, at the request of either the Department or the Company, individually or jointly, the Board may extend the ARP for up to two successive two-year terms, but the ARP cannot continue in effect after September 30, 2013. Paragraph No. 4 to the 7109 Order also required VGS to file criteria to evaluate the ARP's effectiveness on or before January 31, 2007; after reviewing the proposed criteria with the Department, the Company filed those criteria with the Board on February 7, 2007.

By letter dated December 30, 2008, in accordance with Paragraph 1d of the ARP, VGS provided ten months' advance notice to the Department and Board of its preference to continue the ARP. In accordance with Paragraph 4 of the 7109 Order, on January 16, 2009, VGS supplemented this notice by filing its assessment of the ARP's effectiveness under the criteria filed with the Board in February 2007.

2. 30 V.S.A. § 218d.

The Department and VGS subsequently engaged in informal discovery as well as negotiations concerning continuation of the ARP. On July 2, 2009, the Department filed a letter informing the Board that the Department and VGS had reached agreement on a two-year renewal of the ARP conditioned upon a reduction in the Company's allowed return on equity to 10.25%, to become effective on a bills-rendered basis on January 1, 2010.

The Board initiated this docket to consider the proposals of both VGS and the Department to continue to regulate VGS under the ARP for an additional two-year term and appointed me as Hearing Officer to hear this matter. I convened a prehearing conference on July 27, 2009, and following the prehearing conference I issued a Prehearing Conference Memorandum scheduling a workshop and technical hearing for August 27, 2009, and requesting that VGS and the Department attempt to resolve a Board concern about the existing ARP's customer-notice provisions. In addition, I asked that the parties file complete versions of the existing and modified ARP with the Board.

On August 10, 2009, VGS filed an MOU by which VGS and the Department formally agreed to continued regulation of the Company under the ARP for an additional, two-year term. The MOU also addresses the Board's concerns about customer notice and attaches an amended and restated version of the ARP.

On August 27, 2009, I and two other Board staff members held a workshop attended by counsel and experts from VGS and the Department. The workshop provided an informal forum in which the Board staff could review the Company's performance under the existing ARP with the attendees. Possible changes for the future were also discussed, including the clarified filing date identified in Finding 1, below. Final, integrated versions of the MOU and the ARP, along with all its Attachments, are appended to this Order.

Based on the evidence of record and the testimony presented at hearing, I hereby report the following findings to the Board in accordance with 30 V.S.A. § 8.

III. FINDINGS OF FACT

1. Under Paragraph 1c of the ARP, the ARP expires no later than September 30, 2013, but the ARP's initial term expires on September 30, 2009, unless either the Department or the VGS

requests that the Board extend the ARP for an additional two-year term. In the modified ARP, this paragraph is amended to require that any such request be filed six months in advance of the expiration date of the then-current ARP. Exh. Joint-1, att. 1 at 1; exh. Joint-3.

2. By letter dated December 30, 2008, VGS notified the Board and the Department of its preference to continue to be regulated under the ARP for an additional two-year term and that any proposed modifications to the ARP would be filed by March 1, 2009. On June 9, 2009, VGS confirmed that it was requesting that the Board extend the ARP with no modifications. By letter dated July 2, 2009, the Department indicated its support for the two-year extension of the ARP conditioned upon a reduction in the allowed rate of return on equity investment by VGS to 10.25%. Ltrs. of Eileen Simollardes (Dec. 30, 2008, and June 9, 2009); ltr. of Jeanne Elias (July 2, 2009).

3. The MOU provides that VGS should continue to be regulated under the ARP for a two-year term commencing on October 1, 2009, conditioned on a reduction in the Company's allowed rate of return to 10.25%. Exh. Joint-1 at 3–4.

4. The MOU also provides that the ARP's provisions regarding customer notice should be amended to provide customers at least 60 days' notice before the first bill is rendered and at least 30 days' notice before service is rendered that implements a quarterly purchased-gas adjustment or annual adjustment in rates. *Id.* at 3.

5. With this amendment, customers will receive notice approximately 30 days before they start to receive service at the higher rate, providing them with time to adjust their consumption if they wish. *Id.*

6. Attachment 1 to the MOU amends the ARP to make this change in the ARP's procedure to customer notice and otherwise restates the ARP. Exh. Joint-1, att. 1; exh. Joint-3.

7. In addition to the change in customer notice, the ARP is modified to reflect a change to the Gas Cost Recovery Purchase Gas Adjustment Mechanism ("GCRPGAM") (Attachment A to Attachment 2 to the ARP). That change provides that the "then-current" NYMEX (New York Mercantile Exchange) strip and basis differential used for pricing contracts under the GCRPGAM will be based upon the average of the last five trading days ending between two and

five trading days before filing forecasted gas costs; the term "then-current" was not previously defined and was, therefore, ambiguous. Attachment A to exh. Joint-1, att. 2; exh. Joint-3.

8. Both VGS and the Department agree that the ARP continues to meet all the statutory criteria listed in Section 218d. Tr. 8/27/09 at 8–9 (Simollardes), and at 10–11 (Behrns).

IV. DISCUSSION

The ARP approved in the 7109 Order appears to be functioning as intended and, with the modifications adopted by the Parties, continues to meet the criteria of 30 V.S.A. § 218d. At the August 27 workshop discussed above (page 3), Board and Department staff discussed with VGS representatives the Company's performance under the effectiveness criteria filed in February 2007 (page 2, above). The concensus was that the ARP has provided benefits for both customers and the Company and that, with the small modifications noted, its term ought to be extended.

However, in the Orders approving the alternative regulation plans set in place for Vermont's two main electric utilities, the Board has included³ provisions that allow the Department to employ a consultant, at the Company's expense, to review the annual rate adjustment filing. I recommend that VGS and the Department consider, in the context of the next renewal, a similar provision.

V. CONCLUSION

I conclude that the modifications to the ARP are just and reasonable and that the ARP, as modified, should remain in effect. I recommend that the Board accept the MOU filed by the parties and approve the proposed 2-year extension of the VGS ARP, as modified.

3. See the ARP for Central Vermont Public Service Corporation approved by the Board in Docket 7336, Order entered 9/30/08, at finding 65, and the ARP for Green Mountain Power Corporation approved by the Board in Docket 7175–6, Order entered 12/20/06, at finding 32.

As provided by 3 V.S.A. § 811, this Proposal for Decision has not been served on the parties to this proceeding because it is not adverse to any party's interest and it approves a stipulated agreement.

Dated at Montpelier, Vermont, this 22nd day of September, 2009.

s/John P. Bentley
John P. Bentley, Esq.
Hearing Officer

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board ("Board") of the State of Vermont that:

1. The Findings and Conclusion of the Hearing Officer are adopted.
2. The Memorandum of Understanding between Vermont Gas Systems, Inc., and the Vermont Department of Public Service, filed with the Public Service Board on August 10, 2009, is approved.
3. Under Paragraph 1a of the Alternative Regulation Plan ("ARP") approved by the Board's Order in Docket 7109, the ARP, as modified, shall remain in effect until September 30, 2011.

Dated at Montpelier, Vermont, this 23rd day of September, 2009.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/James Volz</u>)	

OFFICE OF THE CLERK

FILED: September 23, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.